

ST 95-29
Tax Type: SALES TAX
Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
) No.
) IBT#
v.) #
)
XXXXX) Alfred M. Walter
) Administrative Law Judge
)
Taxpayer(s))

RECOMMENDATION FOR DISPOSITION

APPEARANCES: No appearance was filed for either of the parties in this matter.

SYNOPSIS: This matter came on for hearing pursuant to the Department's Notice to the respondent taxpayer that a hearing had been set for the purpose of determining whether the taxpayer had possessed packages of unstamped cigarettes in violation of the Illinois Cigarette Tax Act, formerly Ill. Rev. Stat. Ch. 120, Sec. 453.1 et seq., now 35 ILCS 130/1 et. seq..

FINDINGS OF FACTS: The testimony of Special Agent James Kinsella of the Illinois Department of Revenue, Bureau of Criminal Investigation, and the Department's Group Exhibit, established the following facts:

1. On January 17, 1995 Agent Kinsella, along with Special Agent Dickinson conducted an inspection of the cigarette inventory at XXXXX, Illinois. In the store premises they met and spoke with XXXXX, who identified himself as the owner of the business. Tr. p.5

2. In an original shipping container the agents found 44 cartons of Indiana stamped cigarettes. The 440 packages of cigarettes bore no

Illinois cigarette tax stamps, and had not been removed from the shipping container, and had not been placed on sales display. Tr. p.6

3. A thorough search of the premises yielded no other improperly stamped cigarettes.

4. XXXXX stated that he had never removed the cigarettes from the shipping container, that he did not know that the cigarettes bore only Indiana tax stamps, and that he had received the cigarettes, gratuitously, from the manufacturer to be used for a sales promotion. Tr. p.7

5. Subsequent investigation and conversation by the agents with the MANUFACTURER sales representatives established that a XXXXX, a sales representative for MANUFACTURER, had arranged to provide the taxpayer with the cigarettes, as a promotional bonus, and was unaware that Indiana stamped cigarettes could not be sold in Illinois. Tr. pp, 7,8,9,10

6. The Special Agents for the Illinois Department of Revenue, as a result of their investigation, believed that this taxpayer did not order the cigarettes, did not pay for the cigarettes, did not expect to receive the cigarettes, and the entire matter was the result of the actions of a well intentioned, but unsophisticated, and unknowing sales representative for the manufacturer. Tr. pp. 9,10

7. That the Illinois Special Agents thereupon seized and took possession of the cigarettes, and are currently holding them in the Department's evidence inventory. Tr. p.10

CONCLUSIONS OF LAW AND RECOMMENDATIONS: On examination of the record established, I must conclude that this taxpayer was, in fact, possessed of unstamped cigarettes in violation of chapter 35 ILCS 130/18a of the Illinois Compiled Statutes, and I recommend that the 44 cartons of cigarettes seized by the Department be confiscated and forfeited to the State of Illinois and disposed of in accordance with the statute in such case made and provided.

Insofar as imposing the penalty provided for in 35 ILCS 130/18b is concerned I conclude that this taxpayer was a victim of circumstances over which he had no control, and in no way overtly contributed to the violation of the statutory prohibition against possession of unstamped cigarettes, and in the absence of any evidence of effort to sell or profit from the events created by the actions of the manufacturer's sales representative, and I refer to 35 ILCS 135/12(a) which requires any person who acquires possession of unstamped cigarettes to file a return and pay the tax thereon within 3 days of such acquisition, and I then refer to 35 ILCS 735/3-8 which provides that the penalties for failure to file a return or pay tax at the required time shall not apply if such failure was due to reasonable cause.

I conclude that the facts in this case adequately establishes reasonable cause for the failure of this taxpayer to file a return and pay tax thereon, and I recommend that no penalty be imposed against this taxpayer

Alfred M. Walter
Administrative Law Judge